

DOCUMENT RESUME

01651 - [A1051914]

[Protest against Denial of Change in Place of Performance].
B-188017. April 1, 1977. 3 pp.

Decision re: Springfield Clothing and Textile Corp.; by Paul G.
Denbling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel; Procurement Law II.
Budget Function: National Defense; Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Defense Supply Agency; Defense Personnel
Support Center, Philadelphia, Pa.
Authority: 4 C.F.R. 20 et seq. B-186613 (1976).

Claimant protested award of a contract for durable
press shirts because of clause in solicitation for clothing
prohibiting change in place of performance except under unusual
circumstances. Protest against agency's refusal to permit change
in place of performance was untimely when filed more than 10
days after protester knew that request for change had been
denied. (Author/DJH)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

M. Boman
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FILE: B-188017

DATE: April 1, 1977

**MATTER OF: Springfield Clothing and
Textile Corporation**

DIGEST:

1. Protest against solicitation clause prohibiting change in place of performance except under unusual circumstances is untimely under 4 C.F.R. § 20.2(b)(1) (1976) when filed after bid opening.
2. Protest concerning agency's refusal to permit change in place of performance is untimely under 4 C.F.R. § 20.2(b)(2) when filed more than 10 days after protester knew that request for change had been denied.

Springfield Clothing and Textile Corporation (Springfield) protests the award of a contract for 64,512 durable press shirts to anyone other than itself under Invitation for Bids No. DSA 100-77-L-0034, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania. For the reasons stated below, we have determined that the protest is untimely filed.

At bid opening on November 4, 1976, Springfield was the low bidder on Item No. 1, consisting of 64,512 shirts--part of the unrestricted portion of a total procurement of 559,800 shirts. On November 5, Springfield requested permission to change its place of performance because the subcontractor which it had proposed in its bid would not furnish the necessary quantity at an acceptable price.

Clause B10 of the solicitation states in part:

"1. Offerors must stipulate below the plant(s) where the work is to be performed, indicating the exact address(es) (Street, City, County, State) thereof, name(s) and address(es) of the

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owner(s) and operator(s), the operation to be performed at such plant(s) and the quantity of items to be manufactured at each plant. FAILURE TO FURNISH THE INFORMATION WITH THE BID MAY RESULT IN REJECTION OF THE BID.

* * * * *

CAUTION: No change in the place of performance shall be permitted between the opening/closing date of offer and the award except in unusual circumstances and then only upon the submission in writing to the Contracting Officer of a complete justification therefor and receipt of the Contracting Officer's written approval. * * *."

Springfield now contends that this clause is invalid. However, having failed to object to the alleged solicitation impropriety prior to bid opening, its objection is untimely under § 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.0 et seq. (1976). This objection, therefore, will not be considered at this time. Chemical Technology, Inc., B-186613, June 30, 1976, 76-1 CPD 428.

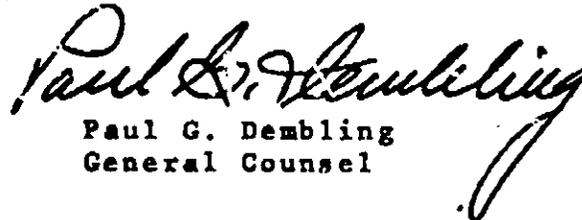
The protester also objects to the Government's refusal to permit a change of subcontractors. On November 11, 1976, Springfield was telephonically notified that its request for a change in the place of performance was denied and that a preaward survey which had been scheduled for the subcontractor proposed as a substitute had been called off. This was followed by a telegram dated November 12, in which the agency formally advised Springfield that its request for a change in the place of performance was denied because it had made no showing of unusual circumstances, as required by clause B10. While the protester claims that it never received this telegram, it is clear from the details submitted in support of its protest, that on November 11, Springfield was notified that the preaward survey on the proposed new subcontractor had been called off, indicating that a change in subcontractors would not be permitted. Subsequently the contracting officer found Springfield to be nonresponsible and referred the matter to the Small Business Administration (SBA) for the possible issuance

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of a Certificate of Competency (COC). Springfield failed to pursue an application for a COC and, on December 15, filed a protest with our Office. (SBA's New York Regional Office, notified the procuring agency on December 21 that a COC would not be issued to Springfield.)

It is apparent that Springfield is interested in the instant contract award only if it is permitted to perform with a substituted subcontractor and it has not contested SBA's action. The record shows that Springfield knew on November 11, that the preaward survey of the substituted subcontractor was being discontinued because no change in the place of performance would be permitted. Our Bid Protest Procedures require that "bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2(b)(2). As Springfield did not file a protest until December 15, more than a month after it was notified that a change in the place of performance would not be permitted, its protest is untimely and will not be considered on the merits.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel